

JUDGE WARD

07 CV 11330

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORKNICKWARD TRADING S.A.,  
X

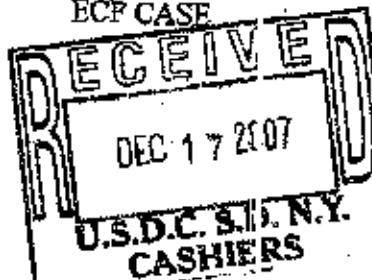
Plaintiff,

- against -

E&I EUROPEAN IMPORT/EXPORT LTD. U.K. a/k/a  
E&I EUROPEAN IMPORT/EXPORT LTD. and  
E&I TRADING EUROPEAN IMPORT/EXPORT  
LIMITED a/k/a E&I TRADING,Defendants.  
X

07 Civ.

ECP CASE

VERIFIED COMPLAINT

Plaintiff, NICKWARD TRADING S.A. ("Plaintiff"), by and through its attorneys, Lennon, Murphy & Lennon, LLC, as and for its Verified Complaint against the Defendants, E&I EUROPEAN IMPORT/EXPORT LTD. U.K. a/k/a E&I EUROPEAN IMPORT/EXPORT LTD. ("E&I") and E&I TRADING EUROPEAN IMPORT/EXPORT LIMITED a/k/a E&I TRADING ("E&I Trading") (hereinafter collectively referred to as "Defendants"), alleges, upon information and belief, as follows:

1. This is an admiralty and maritime claim within the meaning of Rule 9(j) of the Federal Rules of Civil Procedure and 28 United States Code § 1333. Jurisdiction over this matter is also present pursuant to the Federal Arbitration Act, 9 United States Code § 1 et seq., and this Court's federal question jurisdiction, 28 United States Code § 1331.

2. At all times material to this action, Plaintiff was, and still is, a foreign corporation, other business entity organized and existing under foreign law.

3. Upon information and belief, Defendants were, and still are, foreign corporations, or other business entities organized and existing under foreign law and are aliases and/or alter-egos of each other.

4. At all material times, Plaintiff was the Owner of the motor vessel "SORMOVSKIY 119" (hereinafter the "Vessel").

5. By a charter party dated October 19, 2007, Plaintiff chartered the Vessel to Defendant E&I. *Please find the charter party annexed hereto as Exhibit "1."*

6. During the course of the charter, disputes arose between the parties regarding E&I's failure to pay detention at the load port of Azov due and owing to Plaintiff under the charter party contract. *See notice showing how detention calculated and invoice detailing amounts owed annexed hereto as Exhibits "2" and "3,"*

7. As a result of E&I's breach of charter party contract, Plaintiff has sustained damages in the principal amount of \$19,707.19, exclusive of interest, arbitration costs and attorneys fees.

8. Pursuant to the charter party, all disputes arising thereunder are to be submitted to arbitration in London with English Law to apply.

9. Despite due demand, E&I has failed and/or refused to pay the sums due and owing to Plaintiff.

10. Therefore, Plaintiff is preparing to commence arbitration against Defendant(s) on its claim.

11. Interest, costs and attorneys' fees are routinely awarded to the prevailing party in proceedings subject to English Law. As best as can now be estimated, Plaintiff expects to recover the following amounts in the arbitration:

|       |  |             |
|-------|--|-------------|
| A.    | Principal claim:   | \$19,707.19 |
| B.    | Interest on claims:<br>2 years at 5.5%, compounded quarterly | \$2,275.03  |
| C.    | Estimated attorneys' fees and expenses:                      | \$5,000.00  |
| D.    | Estimated arbitration costs:                                 | \$7,000.00  |
| Total |  | \$33,982.22 |

12. Upon information and belief, "E&I TRADING EUROPEAN IMPORT/EXPORT LIMITED" is an alias of "E&I EUROPEAN IMPORT/EXPORT LTD." and their names are used interchangeably.

13. Although "E&I EUROPEAN IMPORT/EXPORT" is the named charterer in the charter party, "E&I TRADING EUROPEAN IMPORT/EXPORT's" stamp is used to sign/verify the documents. *See Charter Party at Exhibit "I."*

14. In the alternative, upon information and belief, E&I Trading is the alter-ego of E&I because it dominates and disregards E&I's corporate form to the extent that E&I Trading is actually carrying on E&I's business and operations as if the same were its own, or vice versa.

15. Upon information and belief, E&I has no separate identity from E&I Trading.

16. Upon information and belief, E&I Trading is registered in the U.K.

17. However, no company with the name "E&I European Import/Export Ltd." could be found as part of Plaintiff's search to ascertain the Defendants' corporate status.

18. In the further alternative, Defendants are partners and/or joint venture(s).

19. In the further alternative, Defendants are affiliated companies such that E&I Trading is now, or will soon be, holding assets belonging to E&I, or vice versa.

20. The Defendants cannot be found within this District within the meaning of

Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure, but, upon information and belief, Defendants have, or will have during the pendency of this action, assets within this District and subject to the jurisdiction of this Court, held in the hands of one or more garnissees which are believed to be due and owing to the Defendant(s).

21. The Plaintiff seeks an order from this court directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, *inter alia*, any assets of the Defendant(s) held by the aforesaid garnissees for the purpose of obtaining personal jurisdiction over the Defendant(s), and to secure the Plaintiff's claims as described above.

WHEREFORE, Plaintiff prays:

- A. That process in due form of law issue against the Defendants, citing them to appear and answer under oath all and singular the matters alleged in the Verified Complaint;
- B. That the Court retain jurisdiction to compel the Defendant(s) to arbitrate in accordance with the United States Arbitration Act, 9 U.S.C. § 1 *et seq.*
- C. That since the Defendants cannot be found within this District pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, this Court issue an Order directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, attaching all goods, chattels, credits, letters of credit, bills of lading, effects, debts and monies, tangible or intangible, or any other funds held by any garnishee within the District which are due and owing to the Defendant(s), in the amount \$33,982.22 calculated to date to secure the

Plaintiff's claims, and that all persons claiming any interest in the same be cited to appear and pursuant to Supplemental Admiralty Rule B answer the matters alleged in the Complaint;

D. That this Court recognize and confirm any award(s) or judgment(s) rendered on the claims set forth herein as a Judgment of this Court;

E. That this Court retain jurisdiction over this matter through the entry of any judgment or award associated with any of the claims currently pending, or which may be initiated in the future, including any appeals thereof;

F. That this Court award Plaintiff its attorney's fees and costs of this action; and

G. That the Plaintiff have such other, further and different relief as the Court may deem just and proper.

Dated: December 17, 2007  
New York, NY

The Plaintiff,  
NICKWARD TRADING S.A.,

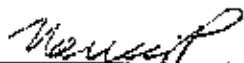
By: Kevin J. Lennon  
Kevin J. Lennon  
Nancy R. Peterson  
LENNON, MURPHY & LENNON, LLC  
420 Lexington Ave., Suite 300  
New York, NY 10170  
(212) 490-6050 - phone  
(212) 490-6070 - fax  
[kjl@lenmur.com](mailto:kjl@lenmur.com)  
[nrp@lenmur.com](mailto:nrp@lenmur.com)

ATTORNEY'S VERIFICATION

State of New York )  
                      )  
                      ss.: New York  
County of New York )

1. My name is Nancy R. Peterson.
2. I am over 18 years of age, of sound mind, capable of making this Verification, and fully competent to testify to all matters stated herein.
3. I am an attorney in the firm of Lennon, Murphy & Lennon, LLC, attorneys for the Plaintiff.
4. I have read the foregoing Verified Complaint and know the content thereof and believe the same to be true and accurate to the best of my knowledge, information and belief.
5. The reason why this Verification is being made by the deponent and not by the Plaintiff is that the Plaintiff is a business organization with no officers or directors now within this District.
6. The source of my knowledge and the grounds for my belief are the statements made, and the documents and information received from, the Plaintiff and agents and/or representatives of the Plaintiff.
7. I am authorized to make this Verification on behalf of the Plaintiff.

Dated: December 17, 2007  
                      New York, NY

  
\_\_\_\_\_  
Nancy R. Peterson

**EXHIBIT "I"**

IMO 8425154, Class E3/10/41 LBP (200), Built 1982,  
 Hull: Gantekos, Port of Registry: Panama, Flag:  
 CRI 1466-NITF: 934,  
 LOA/BWL: 145.70x43.88x5.50 m. LBP: 126.46 m. Draft 3.81 m.  
 DWT: 1312, DWIC: 1150, Sea speed 9.0 knots.  
 HATCH COVERS: "MOVING" TYPE, SIMULTANEOUS OPENING OF COVERS 50%  
 COVERS IN THE "MADELED WAY" ARE MOVED WHERE NECESSARY.

| HOLDS               | COAMINGS         | HATCH COVERS | VOLUME       |
|---------------------|------------------|--------------|--------------|
| 02 15,60x12,88x4,00 | 15,60x10,90x1,20 | 15,83x11,16  | 37'520 CBFT  |
| 04 18,00x12,88x4,00 | 15,60x10,90x1,20 | 15,83x11,16  | 39'470 CBFT  |
| 03 18,00x12,88x4,00 | 15,60x10,90x1,20 | 15,83x11,16  | 39'470 CBFT  |
| 04 18,00x12,88x4,00 | 15,60x10,90x1,20 | 15,83x11,16  | 39'470 CBFT  |
| 07&11 12x4 m CAP.   |                  | 15,83x11,16  | 37'620 CBFT  |
|                     |                  |              | 120'100 CBFT |

IGHT OF HOLDS IN HATCHWAY 5,47 m  
 AND: INGOSSTRAKH, HAM: INGOSSTRAKH  
 J. DETAILS WOG

SUBSTITUTE:

- B "ST. CLAIR" (Crashy Type) IMO: 8956469,  
 C M: KMV 14 35P (RMR) Built: 1976,  
 P: de-Vincent, Port of Registry: Kingslinton,  
 G: 2463, NRT: 979,  
 LM: 196.40x14.80x5.0m. LBP: 103.00 m. Draft 3.26 m.  
 DM: 1.3201, DWIC: 1051, Sea speed 9.0 knots.  
 JL: CH COVERS "MC GREGOR" SIMULTANEOUS OPENING 24.

| HOLDS                | COAMINGS         | HATCH COVERS | VOLUME       |
|----------------------|------------------|--------------|--------------|
| No. 18,00x12,88x4,00 | 15,60x10,90x1,20 | 15,83x11,16  | 37'520 CBFT  |
| No. 18,00x12,88x4,00 | 15,60x10,90x1,20 | 15,83x11,16  | 39'470 CBFT  |
| No. 18,00x12,88x4,00 | 15,60x10,90x1,20 | 15,83x11,16  | 39'470 CBFT  |
| No. 12,40x12,88x4,00 | 15,60x10,90x1,20 | 15,83x11,16  | 38'332 CBFT  |
| TO 12 GRAIN CAP;     |                  |              | 154'800 CBFT |

- HEIGHT OF HOLDS IN HATCHWAY 5,20 m.  
 PAI: INGOSSTRAKH, HAM: INGOSSTRAKH  
 VA: DETAILS WOG

- FOR  
 AC E&I EUROPEAN IMPORT-EXPORT LTD. UK  
 MI 100 MTS FOR SOKOLOVSKY 119 AND 3000 MTS FOR ST. CLAIR. UP TO F/C CO IN OWNERS OPTION OF WHEAT IN BULK STW 45°.  
 WI 7' CAST UPTO DRAFT RESTRICTION  
 CA 10 TO BE LOADED ONCE (CHECK ONLY IN ACCORDANCE WITH SHIP'S LOADING MANUALS AND STABILITY BOOKLET).  
 LA PORT: 1 OSPI AAAA AZOV  
 DE 1 PORT: 1 OSPI AAAA PORT  
 LC 15 OCT 2007 FOR SOKOLOVSKY 119.  
 UC 14 NOV 2007 FOR ST. CLAIR.  
 LO 1000 MTS PAYMENT 24 CONS HRS SANCTI PETRI TIME FROM 1700 FRIDAY OR  
 AI 7 PRECEDING LEGAL HOLIDAY UNTIL 0800 MONDAY OR A DAY FOLLOWING  
 LM 1 HOLIDAY NOT TO COUNT AS LAYTIME EVEN IF USED  
 DE 11000 MTS PAYMENT 24 CONS HRS SANCTI PETRI TIME FROM 1700 FRIDAY OR  
 AI 7 PRECEDING LEGAL HOLIDAY UNTIL 0800 MONDAY OR A DAY FOLLOWING  
 LM 1 HOLIDAY NOT TO COUNT AS LAYTIME EVEN IF USED  
 UP ARRIVAL AT LOADPORT VST. WILL BE READY FOR LOADING AFTER DEBALLASTING  
 ND TO BE TENDERED WWW BY TELEX/CABLE/WHFAX BENDS WI LC DATES, WI OFFICE HKS.  
 AT MIDNIGHT KHM OFFICE HOURS (BOSTON TIME)  
 AT PADDON/CHARGING POINT(S) IF NOR TENDERED BEFORE NOON (INCLUDING), THEN TIME START TO COUNT IN  
 0800 IF NOR TENDERED AFTER NOON, THEN TIME START TO COUNT 08AM NEXT WORKING DAY.

THIS TERMS



- HOLIDAY WORKING HOURS TO BE AS PER LUMCO 30/7 HOLIDAY CALENDAR APPLICABLE IN ALL THE COUNTRIES.
- LAYTIME NOT REVERSIBLE
- RUSSIA HOLIDAYS CLAUSE: AT LOADING PORT IN CASE GOVERNMENT PERFORMS UNOFFICIAL TRANSFER OF A WORKING DAY TO A WEEK-END (SUNDAY OR SATURDAY), THEN SUCH DAY TO COUNT AS WORKING DAY.
- TIME FOR PROCEEDING FROM ANCHORAGE TO BERTH SHIFTING/PILOTAGE NOT TO COUNT AS LAYTIME
- IF VESSEL IS REQUIRED TO SHIFT BETWEEN TWO BERTHS AT LOAD AND DISCHARGING PORT TIME IS TO COUNT AS LAYTIME ALL SHIFTING EXPENSES TO BE FOR CHARTERER'S ACCT.
- FRT USD 32.00 PAY POST L/SD SPOT/DLR AB DRILLED
- NET PAYABLE 100 PCT LESS COMMISSION WITH 5 DAYS AFTER SIR BSL MARKED
- "MAINTENANCE PAYABLE AS PER C/P" AND "CLEAN ON BOARD" INTO OWNERS NOMINATED BANK ACC IN USD CURRENCY
- BMT IAC BBB
- DATE OF C/P TO BE INSCRIBED ON THE FACE SIDE OF BSL
- AFTER LOADING IS COMPLETE, HOLD TO BE SEALED BY SHIPPERS OR SURVEYORS FOR THEIR TIME/ACCOUNT SURVEYORS
- IF THE SEALS PRESENTED TO RECEIVERS OR HIS REPRESENTATIVE OR CHARTERERS AGENT AT DISCHARGE PORT PRIOR TO SIGNATURES, BERM MASTER & OWNERS ARE NOT RESPONSIBLE FOR POSSIBLE SHORTAGE CLAIMS, WHICH HAVE TO BE SETTLED B/W CHARTERERS AND RECEIVERS DIRECTLY
- FREIGHT PAYABLE DEEMED BASED UPON COMPLETION OF LOADING NON RETURNABLE / DISCOUNTLESS VESSEL AND OR VESSEL LOST OR NOT LOST
- BMT USD 12000 PDR/SDN BENDS
- B/M AT LPORT IN ANY TO SETTLED TOGETHER WITH FREIGHT PAYMENT AGAINST MUTUALLY AGREED LAYTIME CALCULATION
- MARKED BY ALL RELEVANT DOCS. T/S, NM, SOF/FAR COPIES ARE ACCEPTABLE IAC BBB,
- B/M AT LPORT TO PAY 5% BDAY. IN PRESENTATION MUTUAL AGREED LAYTIME CALCULATION SUPPORTED BY ALL RELEVANT DOCS.
- FLOAD PORT LAYTIME TO CEASE COUNTING UNTIL CARGO DOCUMENTS ON BOARD
- NOR ON DEMURRAGE RATE ALWAYS ON DEMURRAGE
- VESSEL ARRIVAL AT LOADPORT VSL WILL BE READY FOR LOADING AND COO
- INTR ACTIVE BENDS / SUB OWS DIA APPROVAL
- INGEN 14 BSL TO REMARKED "FREIGHT PAYABLE AS PER C/P" AND "COS"
- CARGO IS INSURED IN LOADPORT AND SIGNED BY MASTER, THEN OWNER TO INSTRUCT  
HER AGENT TO RELEASE BSL UNL OWNERS BANKERS RECEIPT DIRECTLY FROM CHARTERERS BANKERS OF T/S CONFIRMING  
THAT FREIGHT HAS BEEN IRREVOCABLY REMITTED TO OWNERS BANK ACCOUNT
- NOT TO BE TRANSMITTED WITHIN LC VIA CABLE/TELEX OR TELCALL/TELETYPE
- NO SURVEY AT PILOT STATION WWW/WWW AND ACCEPTED AS PER CHARTERER'S FORMULA
- IS ACTUALLY USED FOR COMMENCEMENT OF LAYTIME NOT TO COUNT
- OWNERS TO GIVE BTA 7248 PRENOTICE AND 24 HRS TO CHARTERERS / AGENTS AT LOAD AND DISCH PORT
- CHARTERER HAS THE RIGHT TO REJECT ANY DAMAGED CARGO THAT MAY CAUSE CLAUSING OF BSL AND SAME TO BE EX-LACED
- CLEAN CARGO, BUT IN ALL CASES PRIOR DRINK SAME FIRST CLASS INDEPENDENT SURVEYOR TO BE APPOINTED BY CHARTERERS TO
- EXAMINE THE CONDITION OF THE CARGO CHARTERS TO BE RESPONSIBLE FOR REPLACEMENT OF CARGO FOUND UNSOUND
- MIGRATION ALLOWED
- MIGRATION IF ANY FOR CHARTERER'S ACCOUNT INCL. TIME LOST
- MIGRATION WITH CREW ON BOARD ALLOWED
- CHARTERERS ARE RESPONSIBLE FOR ENSURING THAT OFFICERS AND CREW AS WELL AS ALL OTHER PERSONS ONBOARD THE VESSEL DURING AND AFTER THE MIGRATION ARE NOT EXPOSED TO ANY HEALTH HAZARDS THAT OVERCHARTERERS
- CONTRACTS TO PAY OWNERS ALL NECESSARY EXPENSES (SUCH AS HOTEL EXPENSES/ETC) INCURRED BECAUSE OF MIGRATION
- CH CREW ON BOARD
- NO SURVEY AT CHARTERER'S ACCORDING TIME BENDS
- ISHLB FRTS PAYABLE ANY RATES
- PAYABLE DUES ON CARGO FREIGHT TO BE FOR CHARTERERS ACCT, SAME ON VESSEL/CREW/FLAG/OWNERSHIP FOR OWNERS ACC
- IN LONDON AS PER THE RULES 34 WITH LATEST AMENDMENTS
- SITUATION IN LONDON AS PER LMAA TERMS, ENGLISH LAW TO APPLY
- OTHERWISE AMENDED AS PER MAIN TERMS CLEAN GENCON 34 WITH 2.5 PCT T/T COMM.

BP

CHARTERERS



EXHIBIT "2"

| 1. Agents<br><b>PORTAGENT LTD</b>                               |                                  | Voy: 0207 A20V - PGT                                  |   |              |       |         |
|---|----------------------------------|---|---|--------------|-------|---------|
| 2. Vessel's name<br><b>Sarmavik-119</b>                         |                                  | 3. Port<br>A20V                                       |   |              |       |         |
| 4. Owners/Consignment Owners                                    |                                  | 5. Vessel berthed<br>08.11.07 18:15                   |   |              |       |         |
|   |                                  | 6. Loading commenced<br>09.11.2007 11:45              |   |              |       |         |
|   |                                  | 7. Loading completed<br>10.11.2007 14:00              |   |              |       |         |
| 8. Cargo<br><b>WHEAT IN BLK</b>                                 |                                  | 9. Discharging commenced<br>10. Discharging completed |   |              |       |         |
|   |                                  | 11. Cargo documents on board                          |   |              |       |         |
| 13. Charter Party   |                                  | 12. Vessel sailed                                     |   |              |       |         |
| 14. Working hours/last hours of the port                        |                                  |   |   |              |       |         |
| 15. Total of Loading weight/quantity<br>3.100.000t MT           |                                  | 16. Outturn weight/quantity                           |   |              |       |         |
| 17. Vessel arrived on roads<br>07.11.07 13:00                   |                                  | 18. Time to count from<br>08.11.07 14:00              |   |              |       |         |
| 19. Notices issued<br>07.11.07 18:00                            |                                  | 20. Rate of demurrage<br>USD 4200 PD PR               |   |              |       |         |
| 21. Next date available   |                                  | 22. Time to stop counting<br>16.11.07 21:30           |   |              |       |         |
| 23. Laytime allowed for loading<br><b>1300 MT/WWD SSHEX BIV</b> |                                  | 24. Detention<br><b>SD 20212.50</b>                   |   |              |       |         |
| <b>LAYTIME COMPUTATION</b>                                      |                                  |   |   |              |       |         |
| Date  | Day                              | Time worked   |   | Laytime used |       | Remarks |
|   |                                  | From  | To  | days         | hours |         |
| 08.11.07  | THU                              | 19:30:00  | 22:15:00  | 0            | 2     | 45      |
| 09.11.07  | THU                              | 23:00:00  | 24:00:00  | 0            | 1     | 0       |
| 09.11.07  | FRI                              | 0:00:00   | 17:00:00  | 0            | 17    | 0       |
| 10.11.07  |                                  |   |   |              |       |         |
| 11.11.07  | MON                              | 2:30:00   | 24:00:00  | 0            | 22    | 0       |
| 12.11.07  | TUE                              | 0:00:00   | 24:00:00  | 1            | 0     | 0       |
| 13.11.07  | WED                              | 0:00:00   | 24:00:00  | 1            | 0     | 0       |
| 14.11.07  | THU                              | 0:00:00   | 24:00:00  | 1            | 0     | 0       |
| 15.11.07  | FRI                              | 0:00:00   | 21:30:00  | 0            | 21    | 30      |
| <b>TOTAL LAYTIME</b>  |                                  |   | 0   | 20           | 45    |         |
| <b>TOTAL ON DETENTION</b>                                       |                                  |   | 1   | 49           | 30    |         |
| Laytime allowed   | 2.3548 days                      | Place and date  |   |              |       |         |
| Laytime used  | 0.6548 days                      |   |   |              |       |         |
| Laytime on detention  | 0.0122 days                      |   |   |              |       |         |
| <b>DETENTION</b>  | USD 4200 X 4.3122 = USD 20212.50 | Signature   |  |              |       |         |

**EXHIBIT "3"**

# TRYGGRONIA INVESTMENTS INC.

51, BANNATYNE GARDENS, CHRIST CHURCH, BARBADOS

## DEMURRAGE/DETENTION INVOICE, m/v "SORMOVSKIY 119"

To: E&I EUROPEAN IMPORT-EXPORT LTD. UK

Dated 16-Nov-07 m/v "Sormovskiy 119"

| Re:                    | Voyage: Azov - Peti |              |
|------------------------|---------------------|--------------|
| Voyage #3              |                     |              |
| No                     | Description         | Amount       |
| 1. Demurrage/Detention | Azov                | \$ 21 212,50 |
| Less<br>Commission:    | 2,50%               | \$ 506,31    |
| Total due:             |                     | \$ 19 706,19 |

Please pay Nineteen Thousand Seven Hundred Seven US Dollars and 19 Cents to following bank account:

|                       |   |
|-----------------------|---|
| Corresponding Bank    | DRESDNER BANK AG, FRANKFURT<br>AM MAIN, GERMANY |
| SWIFT Corr. Bank      | DRS DE FF                                       |
| Correspondent account | 4990206704400400                                |
| Beneficiary Bank:     | BALTIC INTERNATIONAL BANK,<br>RIGA, LATVIA      |
| Beneficiary SWIFT     | BLIS LV 22                                      |
| Beneficiary Account   | LV74BLIB3260002733001                           |
| Beneficiary Name      | TRYGGRONIA INVESTMENTS<br>INCORPORATION         |

